



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5825

by Rep. David R. Leitch

SYNOPSIS AS INTRODUCED:

750 ILCS 5/503

from Ch. 40, par. 503

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that in the case of a life insurance policy that does not constitute marital property, upon the entry of an order for dissolution of marriage or declaration of invalidity of marriage, a beneficiary designation which provides for the payment of a death benefit to the other party is revoked unless the court orders otherwise or the insured affirmatively designates otherwise in a signed writing executed after the entry of the order for dissolution of marriage or declaration of invalidity of marriage. Provides that if a benefit is prevented from passing to a former spouse by the new provisions, the payor shall pay a death benefit in accordance with the contract providing for the death benefit as if the former spouse had predeceased the decedent. Provides that the new provisions do not apply to policies contracted for the purpose of securing a maintenance or child support obligation.

LRB098 15292 HEP 50315 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Section 503 as follows:

6 (750 ILCS 5/503) (from Ch. 40, par. 503)

7 Sec. 503. Disposition of property.

8 (a) For purposes of this Act, "marital property" means all
9 property acquired by either spouse subsequent to the marriage,
10 except the following, which is known as "non-marital property":

11 (1) property acquired by gift, legacy or descent;

12 (2) property acquired in exchange for property
13 acquired before the marriage or in exchange for property
14 acquired by gift, legacy or descent;

15 (3) property acquired by a spouse after a judgment of
16 legal separation;

17 (4) property excluded by valid agreement of the
18 parties;

19 (5) any judgment or property obtained by judgment
20 awarded to a spouse from the other spouse;

21 (6) property acquired before the marriage;

22 (7) the increase in value of property acquired by a
23 method listed in paragraphs (1) through (6) of this

1 subsection, irrespective of whether the increase results
2 from a contribution of marital property, non-marital
3 property, the personal effort of a spouse, or otherwise,
4 subject to the right of reimbursement provided in
5 subsection (c) of this Section; and

6 (8) income from property acquired by a method listed in
7 paragraphs (1) through (7) of this subsection if the income
8 is not attributable to the personal effort of a spouse.

9 (b) (1) For purposes of distribution of property pursuant to
10 this Section, all property acquired by either spouse after the
11 marriage and before a judgment of dissolution of marriage or
12 declaration of invalidity of marriage, including non-marital
13 property transferred into some form of co-ownership between the
14 spouses, is presumed to be marital property, regardless of
15 whether title is held individually or by the spouses in some
16 form of co-ownership such as joint tenancy, tenancy in common,
17 tenancy by the entirety, or community property. The presumption
18 of marital property is overcome by a showing that the property
19 was acquired by a method listed in subsection (a) of this
20 Section.

21 (2) For purposes of distribution of property pursuant to
22 this Section, all pension benefits (including pension benefits
23 under the Illinois Pension Code) acquired by either spouse
24 after the marriage and before a judgment of dissolution of
25 marriage or declaration of invalidity of the marriage are
26 presumed to be marital property, regardless of which spouse

1 participates in the pension plan. The presumption that these
2 pension benefits are marital property is overcome by a showing
3 that the pension benefits were acquired by a method listed in
4 subsection (a) of this Section. The right to a division of
5 pension benefits in just proportions under this Section is
6 enforceable under Section 1-119 of the Illinois Pension Code.

7 The value of pension benefits in a retirement system
8 subject to the Illinois Pension Code shall be determined in
9 accordance with the valuation procedures established by the
10 retirement system.

11 The recognition of pension benefits as marital property and
12 the division of those benefits pursuant to a Qualified Illinois
13 Domestic Relations Order shall not be deemed to be a
14 diminishment, alienation, or impairment of those benefits. The
15 division of pension benefits is an allocation of property in
16 which each spouse has a species of common ownership.

17 (3) For purposes of distribution of property under this
18 Section, all stock options granted to either spouse after the
19 marriage and before a judgment of dissolution of marriage or
20 declaration of invalidity of marriage, whether vested or
21 non-vested or whether their value is ascertainable, are
22 presumed to be marital property. This presumption of marital
23 property is overcome by a showing that the stock options were
24 acquired by a method listed in subsection (a) of this Section.
25 The court shall allocate stock options between the parties at
26 the time of the judgment of dissolution of marriage or

1 declaration of invalidity of marriage recognizing that the
2 value of the stock options may not be then determinable and
3 that the actual division of the options may not occur until a
4 future date. In making the allocation between the parties, the
5 court shall consider, in addition to the factors set forth in
6 subsection (d) of this Section, the following:

7 (i) All circumstances underlying the grant of the stock
8 option including but not limited to whether the grant was
9 for past, present, or future efforts, or any combination
10 thereof.

11 (ii) The length of time from the grant of the option to
12 the time the option is exercisable.

13 (b-5) As to any policy of life insurance insuring the life
14 of either spouse, or any interest in such policy, that
15 constitutes marital property, whether whole life, term life,
16 group term life, universal life, or other form of life
17 insurance policy, and whether or not the value is
18 ascertainable, the court shall allocate ownership, death
19 benefits or the right to assign death benefits, and the
20 obligation for premium payments, if any, equitably between the
21 parties at the time of the judgment for dissolution or
22 declaration of invalidity of marriage.

23 (b-7) In the case of a life insurance policy that does not
24 constitute marital property, upon the entry of an order for
25 dissolution of marriage or declaration of invalidity of
26 marriage, a beneficiary designation which provides for the

1 payment of a death benefit to the other party is revoked unless
2 the court orders otherwise or the insured affirmatively
3 designates otherwise in a signed writing executed after the
4 entry of the order for dissolution of marriage or declaration
5 of invalidity of marriage. If a death benefit is prevented from
6 passing to a former spouse by this subsection (b-7), the payor
7 shall pay the benefit in accordance with the contract providing
8 for the death benefit as if the former spouse had predeceased
9 the decedent. This subsection (b-7) does not apply to insurance
10 policies contracted for the purpose of securing a maintenance
11 or child support obligation.

12 (c) Commingled marital and non-marital property shall be
13 treated in the following manner, unless otherwise agreed by the
14 spouses:

15 (1) When marital and non-marital property are
16 commingled by contributing one estate of property into
17 another resulting in a loss of identity of the contributed
18 property, the classification of the contributed property
19 is transmuted to the estate receiving the contribution,
20 subject to the provisions of paragraph (2) of this
21 subsection; provided that if marital and non-marital
22 property are commingled into newly acquired property
23 resulting in a loss of identity of the contributing
24 estates, the commingled property shall be deemed
25 transmuted to marital property, subject to the provisions
26 of paragraph (2) of this subsection.

1 (2) When one estate of property makes a contribution to
2 another estate of property, or when a spouse contributes
3 personal effort to non-marital property, the contributing
4 estate shall be reimbursed from the estate receiving the
5 contribution notwithstanding any transmutation; provided,
6 that no such reimbursement shall be made with respect to a
7 contribution which is not retraceable by clear and
8 convincing evidence, or was a gift, or, in the case of a
9 contribution of personal effort of a spouse to non-marital
10 property, unless the effort is significant and results in
11 substantial appreciation of the non-marital property.
12 Personal effort of a spouse shall be deemed a contribution
13 by the marital estate. The court may provide for
14 reimbursement out of the marital property to be divided or
15 by imposing a lien against the non-marital property which
16 received the contribution.

17 (d) In a proceeding for dissolution of marriage or
18 declaration of invalidity of marriage, or in a proceeding for
19 disposition of property following dissolution of marriage by a
20 court which lacked personal jurisdiction over the absent spouse
21 or lacked jurisdiction to dispose of the property, the court
22 shall assign each spouse's non-marital property to that spouse.
23 It also shall divide the marital property without regard to
24 marital misconduct in just proportions considering all
25 relevant factors, including:

26 (1) the contribution of each party to the acquisition,

1 preservation, or increase or decrease in value of the
2 marital or non-marital property, including (i) any such
3 decrease attributable to a payment deemed to have been an
4 advance from the parties' marital estate under subsection
5 (c-1)(2) of Section 501 and (ii) the contribution of a
6 spouse as a homemaker or to the family unit;

7 (2) the dissipation by each party of the marital or
8 non-marital property, provided that a party's claim of
9 dissipation is subject to the following conditions:

10 (i) a notice of intent to claim dissipation shall
11 be given no later than 60 days before trial or 30 days
12 after discovery closes, whichever is later;

13 (ii) the notice of intent to claim dissipation
14 shall contain, at a minimum, a date or period of time
15 during which the marriage began undergoing an
16 irretrievable breakdown, an identification of the
17 property dissipated, and a date or period of time
18 during which the dissipation occurred;

19 (iii) the notice of intent to claim dissipation
20 shall be filed with the clerk of the court and be
21 served pursuant to applicable rules;

22 (iv) no dissipation shall be deemed to have
23 occurred prior to 5 years before the filing of the
24 petition for dissolution of marriage, or 3 years after
25 the party claiming dissipation knew or should have
26 known of the dissipation;

1 (3) the value of the property assigned to each spouse;

2 (4) the duration of the marriage;

3 (5) the relevant economic circumstances of each spouse
4 when the division of property is to become effective,
5 including the desirability of awarding the family home, or
6 the right to live therein for reasonable periods, to the
7 spouse having custody of the children;

8 (6) any obligations and rights arising from a prior
9 marriage of either party;

10 (7) any antenuptial agreement of the parties;

11 (8) the age, health, station, occupation, amount and
12 sources of income, vocational skills, employability,
13 estate, liabilities, and needs of each of the parties;

14 (9) the custodial provisions for any children;

15 (10) whether the apportionment is in lieu of or in
16 addition to maintenance;

17 (11) the reasonable opportunity of each spouse for
18 future acquisition of capital assets and income; and

19 (12) the tax consequences of the property division upon
20 the respective economic circumstances of the parties.

21 (e) Each spouse has a species of common ownership in the
22 marital property which vests at the time dissolution
23 proceedings are commenced and continues only during the
24 pendency of the action. Any such interest in marital property
25 shall not encumber that property so as to restrict its
26 transfer, assignment or conveyance by the title holder unless

1 such title holder is specifically enjoined from making such
2 transfer, assignment or conveyance.

3 (f) In a proceeding for dissolution of marriage or
4 declaration of invalidity of marriage or in a proceeding for
5 disposition of property following dissolution of marriage by a
6 court that lacked personal jurisdiction over the absent spouse
7 or lacked jurisdiction to dispose of the property, the court,
8 in determining the value of the marital and non-marital
9 property for purposes of dividing the property, shall value the
10 property as of the date of trial or some other date as close to
11 the date of trial as is practicable.

12 (g) The court if necessary to protect and promote the best
13 interests of the children may set aside a portion of the
14 jointly or separately held estates of the parties in a separate
15 fund or trust for the support, maintenance, education, physical
16 and mental health, and general welfare of any minor, dependent,
17 or incompetent child of the parties. In making a determination
18 under this subsection, the court may consider, among other
19 things, the conviction of a party of any of the offenses set
20 forth in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
21 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13, 12-14, 12-14.1,
22 12-15, or 12-16, or Section 12-3.05 except for subdivision
23 (a) (4) or (g) (1), of the Criminal Code of 1961 or the Criminal
24 Code of 2012 if the victim is a child of one or both of the
25 parties, and there is a need for, and cost of, care, healing
26 and counseling for the child who is the victim of the crime.

1 (h) Unless specifically directed by a reviewing court, or
2 upon good cause shown, the court shall not on remand consider
3 any increase or decrease in the value of any "marital" or
4 "non-marital" property occurring since the assessment of such
5 property at the original trial or hearing, but shall use only
6 that assessment made at the original trial or hearing.

7 (i) The court may make such judgments affecting the marital
8 property as may be just and may enforce such judgments by
9 ordering a sale of marital property, with proceeds therefrom to
10 be applied as determined by the court.

11 (j) After proofs have closed in the final hearing on all
12 other issues between the parties (or in conjunction with the
13 final hearing, if all parties so stipulate) and before judgment
14 is entered, a party's petition for contribution to fees and
15 costs incurred in the proceeding shall be heard and decided, in
16 accordance with the following provisions:

17 (1) A petition for contribution, if not filed before
18 the final hearing on other issues between the parties,
19 shall be filed no later than 30 days after the closing of
20 proofs in the final hearing or within such other period as
21 the court orders.

22 (2) Any award of contribution to one party from the
23 other party shall be based on the criteria for division of
24 marital property under this Section 503 and, if maintenance
25 has been awarded, on the criteria for an award of
26 maintenance under Section 504.

1 (3) The filing of a petition for contribution shall not
2 be deemed to constitute a waiver of the attorney-client
3 privilege between the petitioning party and current or
4 former counsel; and such a waiver shall not constitute a
5 prerequisite to a hearing for contribution. If either
6 party's presentation on contribution, however, includes
7 evidence within the scope of the attorney-client
8 privilege, the disclosure or disclosures shall be narrowly
9 construed and shall not be deemed by the court to
10 constitute a general waiver of the privilege as to matters
11 beyond the scope of the presentation.

12 (4) No finding on which a contribution award is based
13 or denied shall be asserted against counsel or former
14 counsel for purposes of any hearing under subsection (c) or
15 (e) of Section 508.

16 (5) A contribution award (payable to either the
17 petitioning party or the party's counsel, or jointly, as
18 the court determines) may be in the form of either a set
19 dollar amount or a percentage of fees and costs (or a
20 portion of fees and costs) to be subsequently agreed upon
21 by the petitioning party and counsel or, alternatively,
22 thereafter determined in a hearing pursuant to subsection
23 (c) of Section 508 or previously or thereafter determined
24 in an independent proceeding under subsection (e) of
25 Section 508.

26 (6) The changes to this Section 503 made by this

1 amendatory Act of 1996 apply to cases pending on or after
2 June 1, 1997, except as otherwise provided in Section 508.

3 The changes made to this Section by this amendatory Act of
4 the 97th General Assembly apply only to petitions for
5 dissolution of marriage filed on or after the effective date of
6 this amendatory Act of the 97th General Assembly.

7 (Source: P.A. 96-583, eff. 1-1-10; 96-1551, Article 1, Section
8 985, eff. 7-1-11; 96-1551, Article 2, Section 1100, eff.
9 7-1-11; 97-608, eff. 1-1-12; 97-941, eff. 1-1-13; 97-1109, eff.
10 1-1-13; 97-1150, eff. 1-25-13.)